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IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
CENTRAL DIVISION

THE ESTATE OF TANNA JO FILLMORE,
DECEASED

By and through, MELANY ZOUMADAKIS,
PERSONAL REPRESENTATIVE OF THE
ESTATE OF TANNA JO FILLMORE,
DECEASED,

Plaintiffs,
vs.

DUCHESNE COUNTY, UTAH; DAVID L.
BOREN, KENNON C. TUBBS, MD, LLC,
KENNON C. TUBBS, MD, JANA CLYDE,
LPN;

Defendants.

**NOTICE OF REMOVAL OF CASE TO
THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF UTAH**

Case No. 2:19-cv-00081-EJF
Judge Evelyn J. Furse

**To: The Honorable Judges of the United States District Court for the District of Utah,
Central Division**

PLEASE TAKE NOTICE that Defendants Kennon C. Tubbs, M.D. and Kennon C.
Tubbs, M.D., LLC (hereinafter collectively "Dr. Kennon"), pursuant to 28 U.S.C. §§ 1331, 1441,
1446, files this Notice of Removal of this case to the United States District Court for the District

of Utah, from the Eighth Judicial District Court of Weber County, State of Utah. In support of this Notice of Removal, Dr. Tubbs states the following:

Timeliness of Removal

1. Plaintiffs filed their original Complaint on or about November 23, 2018, in the Eighth District Court, State of Utah. *See* docket, *Tanna Jo Fillmore vs. Duchesne County* Eighth District Case No. 180800068, attached hereto as Exhibit A.

2. Plaintiffs subsequently filed an Amended Complaint on or about December 4, 2018, in the Eighth District Court, State of Utah. *See id.*

3. Dr. Kennon Tubbs was personally served with the Amended Complaint on January 5, 2019. *See* Summons and Complaint, attached hereto as Exhibit B.

4. This removal to Federal Court is effectuated within 30 days of service of the Amended Complaint on Dr. Tubbs. *See* 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999) (notice of removal is timely under 28 U.S.C. § 1446(b) if filed within 30 days after service of the Petition or Complaint on the removing defendant).

Background

5. Plaintiffs' Amended Complaint, arises out of Tanna Jo Fillmore's confinement in the Duchesne County Jail, and asserts various claims against all defendants alleging violations of 42 U.S.C. §1983, and Eight and Fourteenth Amendments of the United States Constitution. *See generally*, Amended Complaint, attached hereto as Exhibit C.

Removal

6. Removal is appropriate as a matter of right because Plaintiffs' suit involves a federal question under the United States Constitution and this Court has jurisdiction under 28

U.S.C. § 1331. Venue is further proper under 28 U.S.C. § 1441(a).

8. An exact copy of this notice of removal has been served upon all parties that have made an appearance in this matter and the Eighth Judicial District Court of Duchesne County.

7. As required by 28 U.S.C. § 1446(a), copies of all process and pleadings served upon the Defendants are attached hereto as exhibits.

8. Contemporaneously with the filing of this Notice of Removal, written notice has been served upon the Plaintiff through its counsel of record and a copy of this Notice of Removal has been filed with the Eighth Judicial District Court of Duchesne County, Utah.

9. Pursuant to Rule 81(c)(2)(C) of the Federal Rules of Civil Procedure, Dr. Kennon's Answer or responsive pleading to Plaintiffs' Amended Complaint will be filed with this Court within 7 days after the filing of this notice of removal.

DATED this 4th day of February, 2019.

RICHARDS BRANDT MILLER NELSON

/s/ Cortney Kochevar

GEORGE T. NAEGLE

CORTNEY KOCHEVAR

Attorneys for Defendants

Kennon C. Tubbs, MD and

Kennon C. Tubbs, MD, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of February, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Tyler B. Ayres
AYRES LAW FIRM
12339 South 800 East, Suite 101
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<input type="checkbox"/>	U.S. Mail – Postage Prepaid
<input type="checkbox"/>	Hand Delivery
<input checked="" type="checkbox"/>	Electronic Filing
<input checked="" type="checkbox"/>	Email

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Attorneys for Plaintiff

/s/ Cortney Kochevar

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